

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-2805-00
MJCooper

date: June 7, 2000

to: Chief, Appeals Division, Rocky Mountain District
Attn: Diana Graham

from: MICHAEL J. COOPER
Special Trial Attorney

Subject: Request for Advice - [REDACTED]

This responds to your request for our advice about the correct entity to execute a consent to extend the statute of limitations for taxable years [REDACTED] and [REDACTED] for [REDACTED] and about which individuals should sign such consents for the entity. We are retaining the binder of materials that you transmitted with your request.

FACTS

Appeals has under consideration twelve TEFRA partnerships, including [REDACTED] that were part of the [REDACTED] consolidated return examination. [REDACTED] and the other partnerships operate wireless phone systems in various locations. [REDACTED]'s tax matters partner (TMP) for its [REDACTED] and [REDACTED] returns was [REDACTED], a [REDACTED] subsidiary and member of its consolidated group. [REDACTED] was acquired by [REDACTED] by merger, with [REDACTED] as the surviving entity. Prior to this acquisition, statute extensions (Forms 872-P) were signed by [REDACTED]. After the acquisition, the extensions were signed by [REDACTED] as successor by merger to [REDACTED].

Since the last extension was obtained, [REDACTED] was acquired by a [REDACTED] corporation, [REDACTED] ([REDACTED]). The acquisition was effected through a merger with a US subsidiary of [REDACTED], [REDACTED]. [REDACTED] was the surviving entity in this merger. After the merger, [REDACTED] became [REDACTED]. [REDACTED] then contributed its [REDACTED] stock to a US partnership called [REDACTED]. [REDACTED] is a Delaware general partnership consisting of [REDACTED] partnerships, [REDACTED] and [REDACTED]. It elected to

be treated as a corporation under the entity selection (check-the-box) regulations.

According to materials supplied by [REDACTED] attached to your memorandum (Tab B.1.), [REDACTED] is managed by a "Partnership Management Board" of [REDACTED] members. This Board has the authority to "conduct any and all business of the Partnership" including the power to borrow money, select banks, and pay charges and expenses.

In [REDACTED] of [REDACTED], [REDACTED] and [REDACTED] entered into a joint venture whereby [REDACTED] contributed much of its wireless operating entities to the venture, which is called [REDACTED].

[REDACTED] is still in existence. In [REDACTED] of [REDACTED], [REDACTED] replaced [REDACTED] as [REDACTED] of [REDACTED]. [REDACTED] was then named a member of [REDACTED]'s Management Board.

QUESTION #1

Who is the proper party to execute a new Form 872-P for [REDACTED]'s [REDACTED] and [REDACTED] tax years and how should the name of the party be worded on 872-P?

ANSWER

Since [REDACTED] remains in existence, it is the correct entity to execute the consent. Treas. Reg. §301.6231(a)(7)-1(l). The correct wording is as follows:

[REDACTED], and Affiliated Companies, successor by merger to [REDACTED], in its capacity as Tax Matters Partner of [REDACTED].

QUESTION # 2

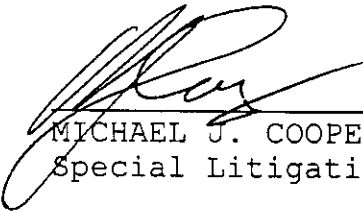
Who is the proper individual to sign the consent on behalf of [REDACTED]?

ANSWER

Based on the information provided with your request, and

assuming that [REDACTED] is still [REDACTED], he is authorized to sign as [REDACTED] of [REDACTED]. We recommend that if [REDACTED] is the person who signs the Form 872-P, the form should specify that he does so in his capacity as CFO, rather than Director (a single Director, acting without other authorization, signature on an agreement does not legally bind a corporation).

Based on the materials with your memorandum, however, we do not recommend obtaining a consent signed by [REDACTED]. This is because his position as a member of [REDACTED]'s Management Board does not empower him to bind [REDACTED], even though [REDACTED] is [REDACTED]'s shareholder. Although the Management Board is authorized to conduct [REDACTED]'s business, [REDACTED]'s is only the shareholder of [REDACTED] and, as a general rule, a shareholder, even a sole shareholder, acting in the capacity of shareholder, is not authorized to act for or legally bind a corporation. Without some additional authorization, such as an [REDACTED] corporate resolution, [REDACTED] is not empowered to bind [REDACTED] and therefore should not sign the 872-P.



MICHAEL J. COOPER
Special Litigation Assistant